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Re: WC Docket No. 06-210
CCB/CPD 96-20

Chronological Flow of AT&T Counsels
Intentional Fraud on Courts and FCC

The following evidences the intentional fraud AT&T counsels have continued to engage in to tie up the Courts and FCC for 20 years.

Background

1) Petitioners were aggregators of toll free service enrolling non-affiliated businesses under one AT&T discount plan called CSTPII/RVPP Plan. To obtain a 28% discount the aggregator made a substantial time and volume commitment to AT&T. Businesses that were receiving for example a 6% discount on their own directly with AT&T could enroll under the aggregators CSTPII/RVPP plan and were provided between 15% to 23% discount instead. The difference between the 28% discount afforded the aggregator and for example 20% given the business location was an 8% spread in revenue of the phone bill, which was the compensation the aggregator obtained.

2) Despite having as high as hundred million in annual revenue per year to AT&T, the 28% discount percentage was ridiculously low compared to discounts AT&T was providing its other AT&T customers. For example other AT&T customers only had to meet only a $4.8 million per year revenue commitment and were provided a 66% discount like AT&T Contract Tariff 516. Petitioners asked for the higher discount but AT&T simply refused----fraudulently claiming that petitioners did not qualify.

3) A company called Public Services Enterprises (PSE) which was also an AT&T aggregator, had far less revenue than petitioners and didn't take no for an answer and filed suit against AT&T and PSE obtained CT516. When AT&T refused to provide a deeper discounted plan the 4 Inga Companies and Combined Companies Inc. (CCI) attempted to transfer the majority of the accounts from its CSTPII/RVPP plans to PSE to obtain additional revenue but maintain its plan. Petitioners plans had already met revenue commitments and could get the traffic back under its agreement with PSE. Having a plan also meant that deposit requirements would not have to be made when taking out a new plan.

4) The AT&T tariff under section 2.1.8 had always allowed for either the transfer of individual accounts (aka "Traffic Only" transfer) or the transfer of the entire plan with all the end-user accounts. Petitioners sought to transfer traffic only to the 66% discount plan to obtain more credits for the end-users and additional revenue for petitioners.

5) AT&T had always processed traffic only transfers under section 2.1.8 of its tariff but now AT&T headed by its in house counsel Edward Barrillari was fraudulently advising its business people to deny the traffic only transfers of aggregators. AT&T simply did not want accounts migrating to the 66% discount plan.

AT&T senior manager Joyce Suek: (Exhibit I in petitioner's initial filing with the FCC in case 06-210) on 6/20/1995 stated:

> Al --Per our Conversation, 6/19; an original TSA is now required for transfer activity. Additionally **we "no longer" process partial TSA's, the TSA must be for the whole plan.**

6) Joyce Suek said "no longer" because we had always done "traffic only" transfers under tariff section 2.1.8. "Partial TSA's" meant "traffic only" transfers as opposed to plan transfers using the **T**ransfer of **S**ervice **A**greement (TSA).

7) More evidence of the AT&T this "partial TSA" fraud that section 2.1.8 does not allow "traffic only" transfers is further evidenced by AT&T Counsel Charles Fash:

July 7th 1995 letter from AT&T's counsel Mr. Fash to petitioners counsel Mr. Helein; here as exhibit H in petitioner's initial FCC filing.

> I will address the "partial TSA" issue first in general and then with your clients express and announced intentions. The Transfer of Service provision of the tariff addresses the issue of transfer of service, not transfer of traffic by moving individual locations from one plan to another. The proper way to move traffic (i.e. a subset of locations on a plan) between plans is to submit service orders to delete the locations from one plan and add the locations to another.

8) This was one of AT&T's frauds after Dec. 1994 through the FCC's 2003 Decision to prevent aggregators from using section 2.1.8., which allowed for mass migration of selected accounts. AT&T wanted to slow down the ability to obtain the deeper discounts. Therefore AT&T engaged in a fraud that 2.1.8 no longer processed "traffic only" transfers so aggregators had to do separate orders to delete many thousands of end user business accounts and then contact many thousands end-users again to re-sign them up again. AT&T counsel Mr. Fash fraud made up some nonsense that service was somehow different than traffic just so the aggregator would not use 2.1.8 to migrate the accounts in mass. The tariff never changed just AT&T's interpretation of it and it was only unlawfully applied against aggregators, not AT&T other direct customers. It was just a made up fraud to prevent easy access to the 66% plan.

9) In addition to the above "Partial TSA" fraud that 2.1.8 no longer allowed for traffic only transfers AT&T was simultaneously engaging in yet another fraud and the two frauds conflicted. AT&T bogusly asserted that petitioner's transaction violated AT&T's "Fraudulent Use" provision because of AT&T's speculation that petitioners were not going to meet the revenue and time commitments on the plan that transferred the traffic i.e. (end user accounts).

AT&T Counsel Fred Whitmer sent petitioners a letter dated February 6th 1995, questioning the traffic transfer.

> Mr. Inga's efforts to transfer these end users and leave the plans intact with their commitments, …..AT&T will seek to enforce its rights in the event shortfall and termination charges become due under the tariff and will hold Mr. Inga personally liable for his conduct intended to deprive AT&T of its tariff charges. (See Exhibit X)

However these plans were pre June 17th 1994 grandfathered and could be restructured without incurring shortfall and termination liability. NJ District Court Judge Politan stressed the plans were immune from shortfall and termination liability in his 1996 decision so AT&T's counsel Frederick Whitmer was simply making a bogus argument.

NJ District Court Judge Politan clearly understood the traffic only transfers ramifications under the tariff. 1996 Politan Decision (Petitioners 1/31/07 filing exhibit Reply B page 19 para 1)

> **"**In answer to the court's questions at the hearing in this matter, Mr. Inga set forth certain methods for restructuring or refinancing by which resellers can and do escape termination and also shortfall charges through renegotiating their plans with AT&T."

District JA pg 66:

> "Suffice it to say that, with **regard to pre-June, 1994 plans,** methods exist for defraying or erasing liability on one plan by transferring or subsuming outstanding commitments into new and better plans pursuant to AT&T's own tariff."

District Court JA 169 -170:

> "Commitments and shortfalls are little more than **illusionary concepts** in the reseller industry—concepts which constantly undergo renegotiation and restructuring. The only "tangible" concern at this juncture is the service AT&T provides. The Court is satisfied that such services and their costs are protected. To the extent however that **AT&T's demand for fifteen million dollars' security is premised on the danger of shortfalls,** the Court finds that threat neither pivotal to the instant injunction nor properly substantiated by AT&T.

AT&T asked Judge Politan to mandate that petitioners post $15 million dollar deposit based upon AT&T's bogus "Fraudulent Use" argument. Judge Politan wouldn't allow a 1 cent deposit based upon AT&T's "Fraudulent Use" assertion because the plans could be restructured without incurring shortfall and or termination charges.

10) In an effort to assert AT&T's bogus claim of "Fraudulent Use" to deny the traffic only transfer AT&T counsel Whitmer made the following statement on 3/21/1995 upon cross examination of Mr. Inga before Judge Politan in NJ Federal District Court:

> Q: Mr Inga, you know, do you not that if the service, **except for the home account**—or Mr. Yeskoo called it the **"lead account**" ---is transferred to PSE **the shortfall and termination liabilities remain** with Winback & Conserve, **isn't that correct?**

Yes this is correct under the tariff. The plans were not transferring and therefore the revenue commitment and time commitment and the associated liabilities for shortfall and termination liability on those commitments to not transfer when only end-user traffic is transferred and not the plan. AT&T Counsel is simply making his point to explain how section 2.1.8 of the tariff works in an effort to assert its bogus "Fraudulent Use" Claim, that the remaining plan would not be able to meet commitments.

Mr. Whitmer further detailed to the NJ District Court explaining plan obligations:

> These charges are all **"tariffed" obligations,** for which CCI**, "not PSE"** (which would have the revenue stream to satisfy such charges), **would be obligated.**

The following is the District Courts March 1996 Decision page 17 para 1 that was issued by Judge Politan as a result of AT&T Counsels position on plan obligation allocation:

> Indeed, AT&T's own counsel focused the issue by indicating that the tariffed obligations "*involved herein*" are all tariffed obligations, for which "CCI, not PSE" would be obligated.

Judge Politan clearly understood what AT&T's counsels position was regarding the allocation of obligations **as per the tariff.** Simply put the former AT&T Customer could transfer *almost* all of the accounts from its AT&T plan to a new AT&T customers plan and because it is not a plan transfer---- but a "traffic only" transfer the non transferred plans revenue commitment and time commitments and the associated shortfall and termination obligations/liabilities of course ***remained*** with the non transferred plan.

Petitioners began its business in 1989 and through 1994 had engaged in many "traffic only" and plan transfers. Petitioners simply indicated on the TSA forms to move "traffic only" and of course indicated the lead home account that was to ***remain*** with the NON TRANSFERRED CSTPII/RVPP plan ----so as to continue being obligated for S&T obligations.

11) Mr. Whitmer's fraud conflicts with Counsel Charles Fash and Director Joyce Suek's fraud. Mr Whitmer concedes that section 2.1.8 ***does*** allow "traffic only" transfers but his fraud is to assert petitioners "traffic only" transfer as abusing AT&T's Fraudulent Use provision. In order to assert this fraud Mr Whitmer obviously concedes that under the tariff the plans revenue and time commitments with associated shortfall and termination obligations remain with the non-transferred CSTPII plans and do not transfer.

12) Mr Whitmer's fraud was asserting the transaction as violating AT&T's fraudulent use because the plans that remained with little account traffic on them. However Mr. Whitmer knew the plans were actually pre June 17th 1994 grandfathered from being inflicted with shortfall and termination liabilities but asserted the fraud anyway.

13) The date of the initial Mr Whitmer fraudulent use warning letter is 2/6/05 and the TSA's were counter signed 1/13/05; thus it is an undisputed fact that AT&T failed 2.1.8's 15 day statute of limitations. AT&T simply disregarded the 15 day statute of limitation within section 2.1.8., and never processed the order.

14) AT&T Counsel Mr. Friedman like Counsel Mr Whitmer also asserted AT&T's "Fraudulent Use" claim. Mr Freidman again cited tariff evidence explaining the plan commitments obviously had to stay with the non transferred plan which of course makes sense…

> As AT&T's customers-of-record, Petitioners were responsible for the tariffed shortfall and termination charges. Section 3.3.1.Q of AT&T FCC No 2 See also AT&T Further Comments filed April 2nd 2003 ("AT&T's Further Comments 2003") at 7-8.

AT&T counsel Friedman correctly quotes AT&T's tariff at 3.3.1.Q bullet 10, correctly stating that S&T obligations were the responsibilities of Petitioners; and of course petitioners plan was not transferred to PSE. AT&T and NJ District Court and Petitioners all agree that plan commitments don't transfer if the plan doesn't transfer.

15) When petitioners did its "traffic only" transaction under tariff section 2.1.8 AT&T clearly understood it was explicitly in compliance with its tariff so AT&T attempted to retroactively change its tariff at the FCC. AT&T filed at the FCC a transmittal 8179 which AT&T hoped would classify petitioner's Traffic Only" transaction as a PLAN TRANFER when a certain percentage of end-user accounts were being transferred. It's typically the cover-up that solves the crime as AT&T was trying to retroactively prevent what was allowed!

16) AT&T's attempt to retroactively change its tariff failed its Substantial Cause Pleading to FCC in 1995:

FCC notes obtained under the Freedom of Information Act (FOIA), here as exhibit K, show that AT&T went to the FCC upon petitioners' Jan 1995 "traffic only" transfer and spent weeks proposing several different changes to 2.1.8 that would mandate that when there were a certain amount of accounts transferred, the plan and its associated liabilities had to be transferred. In any event all these proposals would be grandfathered as each stated at the bottom:

> This Section F. applies only with respect to volume or term plans or Contract Tariff subscriptions that were not in effect prior to <<TED>>".

<<TED>> means term end date, so existing plans would be grandfathered. AT&T kept telling Judge Politan that the issue was being resolved at the FCC. AT&T delayed many months and in the meantime was feeding our end-user data records to a telemarketing firm in Florida to attack our account base.

17) Petitioners ordered the (FOIA) notes and it showed the FCC's position was that AT&T's retroactive argument was nonsense and AT&T was simply delaying Judge Politan as it continued to attack petitioners customer base.

> Finally, SC says AT&T should ***not*** **have to grandfather** existing customers as it gets different admin rules based on only when entered into the term plans and that developing and implementing such rules

> would create needless regulatory complexities with attendant costs and delay. **But this does not make sense**. (See exhibit M in petitioners initial FCC filing)

18) AT&T's filing of Tr. 8179 showed AT&T's unsuccessful attempt to retroactively change the status quo of 2.1.8. AT&T attempted to mandate that when a substantial percentage of accounts were transferred it would require the plan and its revenue commitments (i.e. shortfall and termination obligations) to be transferred; whereas revenue and time commitments and associated S&T liabilities don't transfer of traffic only transfers. AT&T's attempt to bogusly argue for "Fraudulent Use" and file TR8179 to retroactively change the 2.1.8 inadvertently was an additional AT&T concession concerning the allocation of obligations. AT&T thus further confirmed that the new AT&T Customer is **not** obligated for assuming the NON transferred plan's revenue and time commitments and the associated liabilities for shortfall and termination charges for those plan commitments.

19) In 1995 attorney Colleen Boothby an attorney for several other aggregators sent letters to the FCC stating AT&T completely stopped traffic only transfers under 2.1.8 and was already imposing Tr. 8179. AT&T's actions were incredibly being enacted despite the fact that Tr. 8179 was denied by the FCC in AT&T's Substantial Cause Pleading! In Jan.1995 AT&T's fraudulent assertion was that to transfer traffic the entire plan must transfer. Exhibit R are petitions from the National Telecom Resellers Association (which represented hundreds of aggregators), which filed petitions to reject, and defeated AT&T's request to retroactively provision Tr. 8179 and add language to 2.1.8 on a retroactive basis. The filings clearly indicate that non transferred plans revenue and time commitments with associated shortfall and termination liabilities never transferred on "traffic only" transfers under 2.1.8. Ms. Boothby detailed many legitimate business reasons why substantial traffic could be transferred without any reason to suspect "fraudulent use".

20) So while AT&T's Joyce Suek and Charles Fash were involved in the fraud that 2.1.8 no longer allowed for traffic only transfers, AT&T was simultaneously acknowledging with the FCC that 2.1.8 did in fact allow "traffic only" transfers as AT&T was seeking through its TR8179 filing to retroactively prohibit large traffic only transfers. The AT&T frauds all began to conflict with each other as AT&T had different counsels engaging in different frauds. AT&T was proverbially throwing "it" up against the wall to see if any of its frauds would stick.

21) Judge Politan's decision shows that he was very angry at AT&T counsel for intentionally delaying the NJ District Court proceedings by asserting that the NJ District Court should not do anything as TR8179 was going to resolve the issue at the FCC. AT&T lost the Substantial Cause proceeding but never alerted Judge Politan.

22) Petitioners contacted the NJ District Court again after months went by and Judge Politan forced AT&T to concede that it lost its FCC TR8179 Substantial Cause pleading to retroactively change Section 2.1.8. AT&T Counsel Richard Meades' certification to the NJ District Court:

> The FCC was concerned that the modified language in Section 2.1.8(c) would have had a broader effect than was needed to achieve AT&T's specific purpose, which was simply to clarify its existing right to prevent a location transfer intended to avoid payment of charges, and **so would constitute a "substantive tariff change".** (Exhibit N page 4 para 9)

Yes in deed the FCC decided that AT&T's attempt to retroactively change 2.1.8 was a substantive tariff change and as such would **not** be retroactively provisioned.

23) AT&T withdrew Transmittal 8179 and replaced it with Transmittal 9229 explaining how in the future AT&T would address the "traffic only" transfer at hand. AT&T Counsel Meade certified:

> On October 26th 1995, AT&T Corp. filed Tariff Transmittal No 9229 with the FCC. Transmittal No 9229 addresses the problem implicated in the CCI-PSE transfer--- the segregation of assets (locations) from liabilities (plan commitments) --- in the following manner. See exhibit N pg.7 para 15.

Notice the Meade concession is Oct 26th 1995 and the case was brought to Politan in Jan 1995. AT&T spent **10 months** delaying Judge Politan under the fraudulent assertion that Judge Politan must wait for the FCC to resolve 2.1.8 as AT&T's TR8179 filing would resolve the issue---all the while AT&T was simultaneously hiring a telemarketing firm to attack petitioner's customer base. AT&T was given dozens of hours of audio tapes of telemarketers who many times mistakenly called petitioners office instead of petitioners end-users.

24) AT&T Counsel certified to the District Court that Tr. 9229 prospectively added deposit requirements and therefore there was nothing within Tr. 9229 that would be determinative of the issue presented on the CCI/PSE transfer. Mr Meade:

> The Deposit for Shortfall Charges included in Transmittal No. 9229 is a "new concept" that meets AT&T's business concern more directly, without addressing the question of intent**.** Because this is new, it will apply only to newly ordered term plans, and so would not be determinative of the issue presented on the CCI/PSE transfer. (Exhibit N pg.7 para 16)

Of course the FCC 2003 Ruling also noted at exhibit B page 11 para 14**:**

> We also do not understand AT&T to argue that any revisions to its tariff that became effective after January 1995 govern resolution of this matter.

25) The NJ District Court issues a decision against AT&T and AT&T gets an injunction from the Third Circuit Court of Appeals. AT&T's tariff interpretation for section 2.1.8 was exactly the same as plaintiff's explaining that only when **ALL** accounts are transferred does it constitute a PLAN transfer. Only plan transfers would necessitate revenue and time commitments with their associated shortfall and termination being transferred. The following is statement made by AT&T counsels David Carpenter, D. Cameron Findlay, Frederick Whitmer, and the "Richard Brown" on April 25th 1996 to the Third Circuit Court.

> "CCI Notes that a transfer of service can apply either to individual end user locations or to entire plans. See CCI Br. At 31-32 & n13. CCI then, incongruously, seeks to defend the District Court by citing "record evidence" that addressed transfers individual end user locations (not entire plan liabilities), and

> showed that the **only "obligation" transferred to the "new customer" in that event is the unpaid liability associated with the individual end user location that is transferred. But that is self-evident under the tariff.** By contrast, when ***all*** the plan's traffic and locations are being transferred to a new customer and the "plan" would then exist only as an **empty shell**, then the "new customer" would not be assuming "all" the associated "obligations" unless it assumed the "existing customer's" shortfall and termination commitments."

26) **ALL** accounts were **not** transferred in the CCI/Inga traffic only transfer to PSE Enterprises. There wasn't a so called "**empty shell**." AT&T Counsel Fred Whitmer conceded in the NJ District Court that the lead account remained so the plan and their commitments did not transfer. The AT&T fraud above was to simply lie as to the facts of the case.

27) AT&T counsel Mr Carpenter engaged in the same mislabeling of petitioners transaction as a plan transfer when he conceded that AT&T lost its AT&T's TR8179 Substantial Cause Pleading.

Third Circuit Oral Pg 43 here as exhibit O. AT&T's Counsel David Carpenter:

> The FCC asked us to withdraw the complaint because the FCC thought we had done more in the tariff language than codify what the tariff already meant because it went beyond prohibiting these **sorts of transfers of "plans"** that would affect transfers of individual locations.

Mr Carpenter bogusly asserted that petitioner's transaction was a plan transfer and confirms that AT&T was trying to do more than clarify how 2.1.8 worked.

28) Petitioners agree revenue and time commitments and their associated liabilities for shortfall and termination liabilities had never transferred on a "traffic only" transfer, only on a plan transfer. CCI's owner Larry G. Shipp certified to the District Court confirming that indebtedness and minimum payment period were transferred; see exhibit E in petitioner's initial FCC filing.

29) AT&T agreed that there was no dispute with CCI's Mr. Shipps' statements that all the obligations listed within 2.1.8 were transferred:

> They submit a Certification by CCI's President, Larry G. Shipp, that allegedly "clarifies the nature and type of obligations transferred with the traffic [at issue]." But there was no dispute on this subject.

PSE's cover letter that was given to AT&T with the "traffic only" transaction explicitly states PSE is doing a **"proper"** submission as it had done many times before. The paperwork submitted to AT&T which (on page 4 of exhibit F to petitioner's initial filing) PSE states:

> Please find a **properly executed** AT&T transfer of Service Agreement (TSA) to move all of the end-user locations, except the 181 account number and the 131 lead number into PSE's CT516. (CSTP/RVPP Plan ID #003690)

30) AT&T is correct there are no disputed facts as to what was done. Whatever obligations 2.1.8 necessitated were willing and able to be assumed by PSE. The Third Circuit Court of Appeals in 1996

sends the case to the FCC. The cover page and each of the nine AT&T Transfer of Service Forms (TSA's) which are verbatim section 2.1.8 show see exhibit F pgs. 4-13 show the form was filled out perfectly.

Additionally the District Court's non vacated May 1995 Decision is the established law of the case:

> The Inga Companies and CCI **followed the transfer section of the tariff to the letter**, they ought not now be forced to deal with a **unilateral change of the rules by AT&T**.

31) The NJ District Court and Third Circuit Court of Appeals asked the FCC for an expedited Decision in 1996 on….

> "whether **section 2.1.8** permits an aggregator to transfer traffic under a plan without transferring the plan itself in the same transaction."

32) Notice Judge Politan did not need to ask the FCC for a breakdown of what obligations transfer as all parties understood how the tariff allocated obligations. Despite the fact that Third Circuit in 1996 asked the FCC for an expedited decision the FCC issued its Declaratory Ruling 7 years later in 2003. The key points of the FCC 2003 ruling were:

A) The FCC ruled that AT&T could not rely upon its "fraudulent use" provision of its tariff due to the **Illegal Remedy** AT&T used in implementing the provision. To prevent the "traffic only" transfer AT&T unlawfully "permanently denied" the traffic only transfer as opposed to the tariffed remedy of only "temporarily suspending" service. AT&T therefore could no longer use as a defense its "fraudulent use" provision. AT&T **fraudulent use assertion** was a fraud in and of itself as the transferor plans has met its revenue commitments and could be restructured without liabilities. These CSTPII/RVPP plans were all ordered prior to June 17th 1994 as stated in the FCC 2003 decision. The plans were immune from shortfall and termination liability—as Judge Politian's decision decided ---and therefore AT&T had no right to even "temporarily suspend" service let alone "permanently deny" the "traffic only" transfer.

B) Even though petitioners used section 2.1.8 to do its' traffic only transfer the FCC did not see where in section 2.1.8 that it allowed for "traffic only" transfers. The FCC stated that since another section of the tariff 3.3.1.Q did allow accounts to be deleted from one plan and added to another plan this would provide the same results as a direct 2.1.8 mass transfer and because the tariff overall did not prohibit "traffic only" transfers—the FCC ruled against AT&T.

C) The FCC actually did use section 2.1.8 to interpret which obligations transfer on "traffic only" transfers.
This was obvious because in the FCC's 2003 decision the joint and several liabilities section of 2.1.8 was interpreted as to which obligations transfer under 2.1.8. The FCC determined the same obligation allocations that AT&T and petitioners had been doing for years—revenue and time commitments and associated shortfall and termination liabilities do not transfer from the non transferred plan on "traffic only" transfers.

33) AT&T appeals the FCC Decision against it to the US COURT OF APPEALS DC Circuit. More AT&T fraud required:

The FCC's brief to the US COURT OF APPEALS explained in detail that S&T obligations & liabilities do Not Transfer. Although the FCC believed that "traffic only" could not be transferred under 2.1.8 the FCC used 2.1.8 to determine which obligations transfer on "traffic only" transfers. It is abundantly clear that the FCC interpreted 2.1.8 so as not to require a transfer of the S&T obligations on a "traffic only" transfer.

Here as exhibit T on page 19 and 20 is the FCC's correct position:

> More fundamentally, however, AT&T's argument collapses, because it incorrectly presumes that, apart from the transferee's assumption of liabilities (which occurs under a transfer of plans, but not a transfer of traffic), a transfer of traffic and a transfer of plans yields identical benefits and burdens to AT&T and its customers. That is not the case**…**
>
> **********
>
> …Thus, each method of structuring the transaction presents distinct benefits and obligations for both AT&T and the customer, and the Commission's reading **gives meaning** to section 2.1.8.

34) Above it is clear that the FCC's statement "gives meaning to section 2.1.8" was because the FCC erroneously believed that the only use for 2.1.8 was due to its obligations language; otherwise 2.1.8 would have no meaning at all since the FCC erroneously believed that the only way "traffic only" could transferred was under 3.3.1.Q bullet 4 (delete and add).

35) And, once again, the FCC confirms that S&T obligations remain with petitioners' plans. Here again within exhibit T on page 11 again is the FCC's correct position: The commission concluded that CCI's obligations remained under the CSTPII and RVPP plans, and that:

> "AT&T's apparent speculation that CCI would fail to meet these commitments and would be judgment-proof did not justify its refusal to transfer the traffic in question.

36) The FCC has already agreed with the District Court, that shortfall obligations do not transfer: FCC Declaratory Ruling exhibit B pg 8 -9 para 11

> Further, CCI (as well as the Inga companies) but not PSE, would continue to have been responsible for any shortfall obligations under the CSTP II/RVPP plans (Also *See First District Court Opinion* at 9.)

37) More clarification: FCC Declaratory Ruling exhibit B & pg 7 n.51

> (3) CCI would continue to be responsible to AT&T for any commitment associated with the CSTP II Plans (which would not be discontinued); and (4) PSE would assist in moving accounts back to CCI upon written notice from CCI that AT&T required CCI to meet its commitments.

38) The FCC correctly took the same position as the NJ District Court regarding allocation of obligations, and which also utilized section 2.1.8's obligations language to interpret and determine which obligations transfer on traffic only transfers. The fact that the Inga Companies were still jointly and severally liable is conclusive that 2.1.8's obligation language was used. The FCC's delete and add accounts analogy regarding HOW ACCOUNTS COULD MOVE under 3.3.1.Q bullet 4 exhibit D, does not even have the joint and several liability provisions in it! The FCC was clearly using 2.1.8's obligation language to decide which obligations transfer, even though the FCC used 3.3.1.Q bullet 4 (delete and add) to state "how" the traffic could transfer.

39) AT&T then takes its case to the US COURT OF APPEALS DC Circuit in an effort to overturn the FCC 2003 Decision. Up until the time of the US COURT OF APPEALS all parties (AT&T, Petitioners and the FCC) agreed that the non transferred plans revenue and time plan commitments with their associated Shortfall and Termination obligations do not transfer on traffic only transfers under the tariff. AT&T counsel Mr Whitmer stressed that under 2.1.8 obligations of the non transferred plan do not transfer in order to assert its bogus "Fraudulent Use" defense.

40) When the FCC ruled in 2003 that AT&T could not rely upon its "fraudulent use" provision due to the illegal remedy in which AT&T applied the fraudulent use provision AT&T was in a real bind. AT&T obviously knew that petitioners used 2.1.8 to transfer the accounts but AT&T certainly could not argue to US COURT OF APPEALS that 2.1.8 indeed allowed "traffic only" transfers given the fact that Petitioners were correct in using 2.1.8 to transfer accounts! More AT&T fraud needed…

41) AT&T obviously needed to argue to the US COURT OF APPEALS that the FCC's movement of account theory of deleting accounts from one plan and adding to the other plan was not the same as a direct mass transfer under 2.1.8. Judge Politian's NJ District Court referral question was:

> "whether **section 2.1.8** permits an aggregator to transfer traffic under a plan without transferring the plan itself in the same transaction."

42) AT&T's needed to overturn the FCC 2003 decision by arguing that section 2.1.8 indeed allowed "traffic only" transfers ----not the FCC's theory of deleting and adding accounts under section 3.3.1.Q. So AT&T's fraud asserted by AT&T's Joyce Suek and Charles Fash that 2.1.8 didn't allow ---so called---partial TSA's was no longer asserted by AT&T. AT&T's major problem now was to argue against the FCC that 2.1.8 actually did allow "traffic only" transfers ---but AT&T fully understood petitioner's used section 2.1.8 to do its traffic only transfer! So AT&T needed to come up with more intentional fraud…. and this next one was a beauty…

43) AT&T came up with a brand new minted defense in 2005 --yes **10 years** after the "traffic only" transfer. It was a desperate intentional fraud given the fact that it was a brand new minted defense that conflicted with eth evidence. Brand new defenses are actually barred under 405 as having never been presented before but AT&T counsels were desperate. Not only should it have been barred but it was contrary to the evidence in the record.

44) AT&T's intentional fraud coupled with an ambiguous tariff led to the scam of the US COURT OF APPEALS Justice John Roberts, Judge Tatel, and Judge Ginsburg that no doubt has AT&T counsels still smirking today. The fly on the wall is probably hearing AT&T counsel David Carpenter boast –"I was able to scam the current Supreme Court Justice of the United States!"

45) AT&T's David Carpenter actually argued to the US Court of Appeals that the mandatory notations on the multi-purpose TSA form of "Traffic Only" as opposed to Plan Transfer -----were actually an effort by petitioners to Transfer "Traffic Only" ----but don't transfer any obligations!

46) AT&T Counsel Richard Brown continued AT&T's newly minted fraud in 2005 to NJ District Court Judge Bassler after this fraud was initially presented to the US Court of Appeals D.C. Circuit by AT&T Counsel David Carpenter: Mr Brown asserted:

> In fact, AT&T counsel argued before the D.C. Circuit that PSE "**didn't assume any obligations.**" See Exh. 9. The phrase "traffic only" that petitioners wrote on each transfer form, see Exh. F (Attachments) The phrase "traffic only" that petitioners wrote on each transfer form, see Exh. F (Attachments), could not simultaneously operate to assume enumerated obligations, yet exclude unremunerated obligations.

47) Mr Brown again attempted to associate the words "Traffic Only" with which obligations are to be transferred when it was simply "Traffic Only" don't transfer the plan—since the form was used for both traffic only or Plan transfers. Obviously the AT&T Transfer of Service Agreement form never said --- don't transfer any obligations ----but AT&T counsel was absolutely desperate for a defense. Judge Politan claimed petitioners had followed the tariff exactly. Section 2.1.8 had a 15 day statute of limitations but AT&T counsels concocted this new fraud after **10 years**—because AT&T couldn't possibly admit that petitioners actually used 2.1.8 to transfer the accounts as it always had. The fact that AT&T in 1995 went to the FCC and tried to retroactively change its tariff in TR8179----for ALL of its Customers, substantiates it was not ***only*** about petitioner's transaction. AT&T knew petitioners "traffic only" transfer strictly adhered to the tariff and therefore sought to change the tariff for everyone to prevent providing deeper discounts. If AT&T actually believed that "Traffic Only" meant don't transfer any obligations it obviously would have asserted such a bogus defense in 1995 and 1996 before the NJ District Court and before the (FCC 1996-2003).

48) Petitioners obtained the transcripts of the US Court of Appeals oral argument several weeks after the argument and sent in a post oral argument brief to correct the intentional frauds David Carpenter threw at the DC Court. AT&T objected to the Post Oral argument brief being accepted because it countered the fraud engaged in by AT&T.

49) Judge Politan's NJ District Court, and the FCC decision did not recognize where in section 2.1.8 that it allowed "traffic only" transfers and the US Court of Appeals said 2.1.8 allowed it but didn't see it either:

The US Court of Appeals decision stated at exhibit C pg. 7 line 1:

> This section on its face does not differentiate between transfers of entire plans and transfers of traffic

Despite the US COURT OF APPEALS not see where in 2.1.8 that it allowed traffic only transfers. It decided based upon the briefs that 2.1.8 did allow for "traffic only" transfers as AT&T needed to finally come clean on this fact only to defeat the FCC. AT&T counsels knew all along where in 2.1.8's language that 2.1.8 allowed traffic only transfers but AT&T kept Judge Politan and the FCC in the dark.

The following is section 2.1.8 and where in 2.1.8 it allows for "traffic only" transfers:

Exhibit B pg. 6 n.46 Section 2.1.8 in Jan 1995 Stated:

> Transfer or Assignment – WATS, including "**ANY"** associated telephone number**(s),** may be transferred or assigned to a new Customer, provided that:
>
> A.The Customer of record (former Customer) requests in writing that the Company transfer or assign WATS to the "new Customer".
> B. The "new Customer" notifies the Company in writing that "it" agrees to assume all obligations of the former Customer at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for the service and (2) the unexpired portion of any applicable minimum payment period(s).
>
> C.The Company acknowledges the transfer or assignment in writing. The acknowledgement will be made within 15 days of receipt of notification.
>
> The transfer or assignment does not relieve or discharge the former Customer from remaining jointly and severally liable with the new Customer for any obligations existing at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for WATS, and (2) the unexpired portion of any applicable minimum payment period(s). When a transfer or assignment occurs, a Record Change Only Charge applies.

Notice the opening sentence of 2.1.8 tariff language allows for ANY number(s) (Singular or Plural), of number transfers, so any subset of traffic, i/e. WATS transfers are expressly permissible under section 2.1.8. The tariff does not use the word: "ALL" it uses the word "ANY" before the amount of end-user phone line accounts to be transferred. Any of course means: One, or some, without specification. Therefore since 2.1.8 allows any number(S) of accounts less than ***all*** of the accounts to be transferred, obviously means some, or almost all of the traffic can be transferred. Notice that the word number(s) also has in parenthesis the (s) which of course means that 1 single number or any amount of numbers of WATS accounts, phone numbers can be transferred. If all the accounts that were on a plan had to be transferred then the singular option "number" and "any" would not be available. If 2.1.8 only allowed plan transfers the language would be all numbers! The US Court of Appeals based upon opened the door to a ***new argument*** as to which obligations transfer on "traffic only" transfers. Up until the US Court of Appeals decision the FCC, AT&T and petitioners all had agreed and understood that under section 2.1.8 that plan commitments did not have to be assumed by the new customer when the new customer was not assuming the plan. The non transferred plans obligations noted within 2.1.8 for: (1) all outstanding indebtedness for the service and (2) the unexpired portion of any applicable minimum payment period(s) transferred to the new customer for the accounts selected for the "traffic only" transfer.

50) The record explicitly states that petitioner's transaction was done under 2.1.8. Initial Petitioner FCC Comments Para. 53:

> "In fact the tariff and AT&T's own form, the Transfer of Service or Assignment (TSA) form, made it possible. We did an assignment of end-user accounts **as per the tariff** and what had been commonly accepted in the marketplace for years."

The NJ District Court 1995 understood also: District Opinion (JA 61):

> "The manner in which such a transfer is carried out is by the submission of a Transfer of Service Agreement and Notification form ("TSA"), executed by both parties to the transfer to AT&T.";

Petitioner Post Oral brief:

> "It has **always been Intervenors position that section 2.1.8** expressly allows for the transaction intended in transferring the accounts to PSE."

51) So the Inga Companies, the District Court, AT&T and even the FCC clearly understood petitioner's "traffic only" request was under 2.1.8 "**as per the tariff."**

52) The US COURT OF APPEALS correctly decided that 2.1.8 did allow for "traffic only" transfers and vacated the FCC's 2003 decision due to the FCC's erroneous belief that 2.1.8 did not allow for individual accounts to be transferred. Petitioners won the FCC Decision using section 2.1.8 to transfer the accounts. The US COURT OF APPEALS decision then knocks out petitioners FCC victory despite petitioners using 2.1.8 and as Judge Politan stated petitioners adhered to 2.1.8. The US COURT OF APPEALS instead of simply recognizing petitioners completed 2.1.8 as per the tariff, raised the question of which obligations transfer on a "traffic only" transfer under 2.1.8! The tariff and not being explicit coupled with AT&T's intentional fraud caused this.

53) AT&T obviously knows petitioners used 2.1.8 to transfer "traffic only" and now the US COURT OF APPEALS DC Circuit has concluded that **yes** 2.1.8 does allow "traffic only" transfers! The case proceeds back to NJ District Court where Judge Bassler now has taken over for the retired Judge Politan. AT&T must now go into operation confuse and scam NJ District Court Judge Bassler and get the case back into the black hole of the FCC.

54) AT&T minted yet another brand new fraud: The case is now 10 years old and AT&T needs to engage in yet another intentional fraud by asserting to the NJ District Court's Judge Bassler that section 2.1.8 actually required that the non transferred plans revenue and time commitments and associated shortfall and termination obligations **must transfer** on "traffic only" transfers. So AT&T went from plan commitments DO **NOT** transfer under the tariff on "traffic only" transfers to now post 2005 plan commitments **DO** transfer on "traffic only" transfers. The frauds just keep changing venue to venue as AT&T counsels do a masterful scam job on each Court and FCC.

55) The most egregious misrepresentation about the new AT&T fraud is that AT&T literally engaged in tens of thousands of "traffic only" transfers over many years under 2.1.8 and of course the transferors plan commitments with associated shortfall and termination obligations ***never*** transferred---and still do not today! An email was sent to AT&T Counsel Richard Brown in May 2014 and copied to all FCC Commissioners asking Mr Brown to provide 1 single "traffic only" transfer in which the transferors plan commitments transferred—Mr Brown confirmed receipt but has never answered. It was simply another intentional fraud upon the court.

56) On June 9th 2014 public comments were posted by Tips, Inc to the FCC Server of many current AT&T Sales and Customer Service Executives who indicated the allocation of obligations for "traffic only" transfers. There were 6 different AT&T executives from all over the USA with up to 13 years of experience! All AT&T executives claimed that transferring toll free accounts without the plan was a common transaction. All asserted that AT&T's post 2005 tariff interpretation that non transferred plans commitments must be assumed by the new customer is not how AT&T does it now -----or has ever done it, as long as they were with AT&T. The names and email addresses of these AT&T executives are all listed in that public comment.

Anyone can call AT&T sales and customer services and AT&T executives will verify that AT&T counsels current assertion to the FCC is a complete fraud – but AT&T of counsel of course knows this. The following numbers are all AT&T phone numbers that you can call and verify AT&T's business

practices never mandated that the new customer must assume the revenue and time commitment and its associated S&T liabilities of the Non-Transferred plan on a "traffic only" transfer:

Enterprise Business Customer Care 877-438-0041
Small Business Sales & Service 888-944-0447 & 800-222-0400

AT&T counsels simply saw how the US Court of Appeals DC Circuit erroneously looked at only two words ---"all obligations" ----of the sentence and AT&T counsel saw an opportunity to come up with another fraud so AT&T changed its tariff interpretation post US Court of Appeals decision.

57) AT&T's counsels were willing to intentionally lie to Judge Bassler to keep the AT&T fraud going. Imagine having the nerve to intentionally scam the NJ Federal District Court Judge Bassler in 2005 and currently the FCC ----bogusly asserting that plan obligations must transfer under a "traffic only" transfer—when AT&T's actual practice in the market place has never been to transfer plan commitments when the plan was not transferring! AT&T counsel incredibly wants the Courts and FCC to actually believe in AT&T's newly created post 2005 all obligations fraud, despite the fact that it is has never been practiced in the marketplace! This is not counsel advocacy for its client---it is way beyond that—it is downright intentionally scam of the Courts and FCC because "we are AT&T and we will get away with it".

58) When the case went from US COURT OF APPEALS DC Circuit to back to NJ, AT&T continually stressed to Judge Bassler that the FCC had primary jurisdiction to further interpret 2.1.8 regarding which obligations transfer on "traffic only"8 transfers. AT&T obviously knew the FCC had taken 7 years to come out with its first decision and at minimum could delay the fraud—so the game plan was simply get the intentional fraud to the FCC and AT&T will scam the FCC again like the first time and no matter what the FCC rules we know the DC Circuit didn't understand the obligations allocation the first time so we can probably scam the DC Circuit again.

Judge Bassler's Order:

> It is further ordered that plaintiffs, no later than August 1, 2006, file an appropriate proceeding under Part I of the FCC's rules to initiate an administrative proceeding to resolve the issue of precisely which obligations should have been transferred under Section 2.1.8 of Tariff No. 2 **as well as any other issues left open** by the D.C. Circuit's Opinion in AT&T Corp. v. Federal Communications Commission, 394 F.3d 933 (D.C. Cir. 2005).

59) Judge Basslers primary jurisdiction referral to the FCC for Declaratory Rulings stated that he wanted resolved "**as well as any other issues left open"** in addition to the traffic only transfer. When the case went to the FCC, AT&T argued that the ***only*** issue that the FCC was to resolve was the "traffic only" transfer issue and none of the other issues having to do with the infliction of shortfall should be decided—because AT&T obviously knew it would lose those issues based upon evidence presented by petitioners after the first FCC Ruling. Prior to the evidence being presented by petitioners AT&T had asserted to the FCC in 1996 that the June 17th 1994 tariff provision needed to be resolved by the FCC.

AT&T in 1996 asserted to the FCC that all issues were encompassed.

> As phrased by the District Court the referral was **not only to the interpretation of Section 2.1.8** of AT&Ts Tariff F.C.C. No. 2 (or any other provision of AT&Ts Tariff F.C.C. No. 2) but to its "application" to the factual circumstances of this case

Within AT&T/CCI settlement agreement AT&T also conceded that the infliction of charges that occurred 18 months after the denied "traffic only" transfer was encompassed ***within*** the pending litigation.

AT&T July 1997 settlement agreement:

> Whereas, the Payment Dispute is, in part, the subject of litigation pending in the United States District Court.....

Regarding the $80 million in charges it is stated within the AT&T CCI settlement agreement:

> The parties agree that the total unpaid shortfall charges (including billed and unbilled charges) **allegedly owed** by Customer to AT&T

The charges of course are allegedly owed because of the pending litigation.

Despite AT&T conceding that all issues are pending and Judge Bassler's referral states: "as well as any other issues left open" AT&T currently asserts the tariff provisions dealing with the infliction of charges is now somehow not to be resolved by the FCC. Why? Obviously because AT&T knows it intentionally lied to the Courts and FCC that the plans were not immune from the S&T charges and no longer wants the issue resolved.

60) Obviously the first time around at the FCC (prior to the FCC 2003 Decision) AT&T argued that shortfall and termination obligations did ***not*** transfer on "traffic only" transfers in order to bogusly assert fraudulent use argument:

> AT&T Reply Comments: Footnote 9 JA 535 "In fact as explained in its initial comments, the basis for AT&T's "fraudulent use" claim was that the proposed transfer would have transferred the entire revenue stream to PSE **without the corresponding obligations to pay any shortfall and termination charges** under the CSTPII plans..."

61) Now at the FCC round two -- AT&T needed to drop its fraud that ZERO Obligations were transferred, which AT&T had used to try and scam the DC Circuit and NJ District Court Judge Bassler. Because the FCC 2003 decision stated that it clearly understood why "traffic only" was placed on the multi-use form, AT&T knew that ---10 year into the case minted fraud---wasn't going to work at the FCC. Due to the FCC's 2003 decision AT&T could no longer argue "fraudulent use" which as Judge Politan stated was illusory in any event. AT&T knew it couldn't argue "fraudulent use" anyway to the FCC as that 1995 bogus assertion inadvertently concedes that revenue and time plan commitments of non transferred plans **don't** transfer on traffic only transfers! The "Fraudulent Use" defense would obviously **conflict** with AT&T's post 2005 "all obligations" fraud in which AT&T asserts that 2.1.8 ***now*** mandates revenue and time commitments **DO** transfer from the NON Transferred plan. At this point it was already determined: 1) AT&T couldn't use its bogus "fraudulent use" assertion due to its illegal remedy 2) that petitioners and PSE properly filled out the AT&T Transfer form and the FCC wasn't going to buy AT&T's post 2005 "traffic-only zero obligations" were transferred fraud 3) and

2.1.8 allowed for mass “traffic only” transfers. AT&T is really down to only it’s post 2005 nonsensical fraud that plan commitments must be assumed when the plan is not being transferred—i.e. a “traffic only” transfer.

62) The following quotes show the FCC recognized that the notations placed on the TSA form were simple instructions to move “traffic only” and not the plans and therefore AT&T knew the FCC wasn’t going to bite on its “zero obligations” fraud so AT&T dropped that one. AT&T will no doubt resurrect the “traffic only” “zero obligations” fraud when it gets back to the US Court of Appeals.

1st) FCC Decision: JA pg.3:

> “At the bottom of each TSA, in handwriting, these parties directed AT&T to move the "Traffic Only" on each plan to PSE. The January 13th cover letter, under which these nine TSAs were forwarded, directs AT&T to "move the locations associated with these plans [but] not in any way to discontinue the plans." (Exhibit H to petition). In this way, CCI and PSE attempted to move to PSE the end-user traffic associated with each of the nine CSTPII/RVPP plans, but not to move the actual plans themselves.";

2nd) FCC Decision: JA pg.8 -9 para.11

> "Further, CCI (as well as the Inga Companies) but not PSE, would continue to have been responsible for any shortfall obligations under the CSTPII/RVPP plans.”

63) Even though the FCC did not see where in 2.1.8 it allowed for “traffic only” transfers the last quote shows that the FCC was interpreting the “traffic only” transfer under 2.1.8, because of the Inga Companies remaining jointly and severally liable under 2.1.8.

FCC 2003 Decision shows the obligations stay with the non transferred plan:

> “Although AT&T also argues that the move also avoided the payment of tariffed termination charges, id., it separately states that termination liability (payment of charges that apply if a term plan is discontinued before the end of the term) **is not at issue here. Opposition at 3 n.1.** That is consistent with the facts of this matter; petitioners never terminated their plans. Accordingly, termination charges are not at issue in this matter.”

64) AT&T couldn’t even keep their frauds consistent! You would think that if you were going to intentionally lie to Judges and the FCC you would try not to have all the frauds and evidence conflict! When the case went back to NJ District Court in 2005 AT&T Counsel Richard Brown threw multiple frauds at Judge Bassler. The following details another Mr. Brown fraud:

65) To understand this scam you first have to understand that there are only two obligations listed within 2.1.8 and ONLY when a PLAN was actually transferred it was understood that the new AT&T customer would have to assume the plans revenue and time commitment and associated obligations for shortfall and termination obligations on the plan. The obligations listed within section 2.1.8:

> These obligations include: (1) all outstanding indebtedness for the service and (2) the unexpired portion of any applicable minimum payment period(s).

Follow the history of AT&T fraud….

66) AT&T changed its position 4 times regarding what was encompassed within "applicable minimum payment period(s)".

AT&T initially argued to the FCC in 1995 when it lost its TR 8179 Substantial Cause Pleading trying to retroactively change 2.1.8 that transferring S&T obligations were somehow encompassed within "minimum payment period" but the following shows the FCC understood that AT&T's attempt to scam the FCC on this point did not work:

1995 FCC FOIA notes indicate:

> Moreover, the unexpired portion of any applicable min pay period would **not** seemingly include unexpired portion of any term of service and usage or rev commit but has its **own unique meaning** and, therefore, the provision about the term plan and commitments **being included as part of the min pay period** is conflicting and we find in favor of customers in cases of conflicts.

AT&T Mr Brown states in 2006 AT&T Opp. Brf. at p. 12-13, fn. 3.

> AT&T did not argue to this Court or the FCC "that S&T obligations are encompassed within minimum payment period." Motion at 13. But AT&T's **consistently maintained position** is that these obligations are encompassed within the phrase "all obligations, "not the phrase "minimum payment period."

67) Obviously AT&T's 2006 assertion to Judge Bassler is not true as AT&T had obviously argued to the FCC in 1995 that shortfall and termination obligations are encompassed within minimum payment period. AT&T in 1995 had obviously asserted to the FCC in its' Substantial Cause Pleading that S&T obligations were encompassed within minimum payment period but Mr Brown simply lies to Judge Bassler that AT&T never made such an assertion. Mr. Brown in 2006 also states that AT&T has **consistently maintained** its position that S&T obligations are within the phrase "all obligations." Can you imagine AT&T counsel actually asserting that it has **consistently maintained** its position that S&T obligations are encompassed within "all obligations" when for the first 10 years of the case (1995-2005) AT&T (Counsels Brown, Whitmer, Barillari, Meade, Friedman, Carpenter) conceded that S&T obligations don't transfer on "traffic only" transfers.

68) The two NJ District Court Opinions, the Third Circuit Decision, the FCC Decision and the DC Circuit Decision do not reflect AT&T ever asserting that transferring S&T obligations were within minimum payment period(s).

69) In 2005 before Judge Bassler AT&T counsel Mr. Brown again reverted back to the old 1995 TR8179 Substantive Cause initial position that S&T obligations are within 2.1.8's second obligation "minimum payment period;" but added a brand new twist to the District Court that only the first list obligation for indebtedness was transferred and not the second one listed, "minimum payment period".

Thus, for the first time ever, Mr Brown asserted that petitioners did not transfer the second obligation which according to AT&T includes the requirement to transfer S&T obligations. This is what petitioners will refer to as the amazing "Nostradamus Crystal Ball Fraud":

70) AT&T counsel Mr Brown got ***so confused*** keeping track of his frauds, as well as other AT&T counsels frauds, it became comical. Mr Brown minted in 2005 a fraud before NJ District Court Judge Bassler that put Mr Brown in a position that had everyone laughing except Mr Brown. Mr. Brown claimed that the reason why AT&T did not do the **1995** "traffic only" transfer was because of a petitioner DC Circuit Court comment made **ten years** later by petitioners in **2005!** Furthermore to make the 1995 Nostradamus denial of petitioner's transaction Mr Brown had to completely take petitioners comment totally out of context.

This fraud was hysterical…

71) The following shows AT&T counsel Mr. Brown in 2005 is back to S&T volume requirements are within the minimum payment period of 2.1.8:

AT&T June 13, 2005 Brf. at p. 7-8.

> First section 2.1.8 requires assumption of all obligations of the former customer, including (1) outstanding indebtedness and (2) "the unexpired portions of any minimum terms of service period." But the Inga Companies asserted that **only the latter obligations** must be assumed and that the term and volume requirements at issue here not matters that had to be assumed, relying on the irrelevant ground that the minimum term for other WATS services under the tariff is one day. JA 187 (See Tariff No 2 Section 2.5.5, Brown Aff., Ex. C)

72) AT&T placed quotes around the second obligation above to focus on minimum payment period and then deliberately misstated it as "service period" than "payment period" to further give the impression that S&T obligations are somehow **within minimum payment period**:

AT&T again in 2005 to the District Court:

> Under their view, the Court should now determine such matters as whether the phrase "all obligations" in section 2.1.8 **somehow excludes** minimum volume/term commitments; **whether these commitments are part of the minimum payment periods" within the meaning of section 2.1.8**
> (2) that the term and volume commitments that give rise to shortfall/termination liabilities **are not unexpired portions of minimum payment periods**,

73) AT&T counsel Mr Brown, scrambling for a defense in **2005**, simply revised the old 1995 FCC already defeated initial position that transferring S&T obligations was somehow **within minimum payment periods** and Mr Brown changed the language of 2.1.8 to make the fraud more feasible.

Then a year later AT&T's Counsel's Brown's re-argument reply brief in the District Court at 12-13, n. 3. in **2006** did yet a another switcheroo for the second time to the same Judge!

> AT&T's **consistently maintained** position is that these obligations are encompassed within the phrase "**all obligations," not the phrase** "minimum payment period.

74) When petitioners showed the Judge Bassler the FCC FOIA notes stating S&T obligations are not encompassed within "minimum payment period" Mr. Brown had to drop that fraud and go with his "all obligations fraud". Imagine AT&T Counsel Brown even told the District Court Judge Bassler that it was a **consistently maintained** position! Mr Brown didn't maintain his own position within one year before the same Judge let alone AT&T's 4 time change over 20 years. It is obvious that AT&T created new bogus defenses and constantly changed positions. When petitioners pointed out the bogus Mr. Brown Nostradamus assertion that AT&T didn't process the transfer in 1995 based upon short quoted comments made by petitioners in 2005 AT&T dropped that fraud also. Coming you also will also understand Mr. Brown's fraud in focusing the Court's attention on only the 2 words "all obligations."

The most egregious part of AT&T's frauds are AT&T counsels arguing with each other's frauds. Counsel Charles Fash and Joyce Suek asserted 2.1.8 no longer allowed "traffic only" transfers. Mr Brown, Whitmer, Meade, Friedman, Barillari, from 1995-2005 argued "fraudulent use" conceding the two obligations were transferred and because under the tariff S&T obligations don't transfer AT&T could suspect "fraudulent use". Mr Brown changed it to 4 obligations needed to be transferred after 2005. Mr. Brown simultaneously argued 2005 to NJ District Court that S&T was somehow included within 2.1.8 as it was encompassed within 2.1.8's "minimum payment period" and petitioners didn't transfer 1 of the two obligations listed on 2.1.8. David Carpenter's fraud 2005 in DC Circuit was "traffic only" transfers were allowed but "Zero Obligations" were transferred. At the same time AT&T stated that one of the obligations "Termination" obligations weren't an issue because the plans weren't being terminated. So AT&T counsels each asserted frauds in which zero, 1, 2, 3 obligations were transferred and one "termination" that it said wasn't an issue. I use to have an .xls spreadsheet that tracked each counsels fraud, the date of the fraud and which aggregator was hearing which fraud. A Hollywood script writer couldn't make this nonsense.

75) There was never any question prior to 2005 as to what obligations transfer when "traffic only" and not the plan transfers under 2.1.8. After extensive testimony the NJ District Court had no problem understanding which obligations transfer as AT&T (Whitmer, Meade, Barillari, Carpenter, Friedman, Brown) obviously had conceded the allocation of obligations under 2.1.8 when it made its "fraudulent use" defense. NJ District Court Decision in 1995:

> **1st)**May 1995 Decision. (JA 59) "As under the arrangement with plaintiffs, AT&T bills PSE's end users directly, subtracting from the bill that amount of discount allotted by PSE to each individual end user. In turn AT&T remits to PSE the difference between the latter's 66% overall discount and that passed on to the end user. As in the plaintiffs' case AT&T deducts from the RVPP discount/rebate remitted to **PSE any bad debt** or unpaid bills accrued by its end users."
>
> **2nd)** May 1995 Decision. (JA 65) "AT&T was further troubled by the fact that if only the traffic on the plans and **not the plans themselves** were transferred to PSE, the liability for shortfall and termination charges attendant thereto...."
>
> **3rd)** May 1995 Decision (JA 66): "Because **AT&T bills the end users directly and can deduct any unpaid debt incurred by end users from the RVPP discount** of the aggregator, plaintiffs argue, there is no danger of shortfall.";
> **4th)** May 1995 Decision. (JA 67): AT&T **replies** to that assertion by arguing that since **ONLY THE TRAFFIC** on the plans was passed to PSE, and **NOT THE "PLANS"** themselves with their **attendant liabilities**."

76) The following petitioner quotes show the "traffic only" transfer was done as per the tariff and all obligations required were to be assumed by PSE:

> Inga Para 53 JA 446: "In fact the tariff and AT&T's own form, the Transfer of Service or Assignment (TSA) form, made it possible. We did an assignment of end-user accounts **as per the tariff** and what had been commonly accepted in the marketplace for years."

77) AT&T's post 2005 "all obligations" fraud is that on traffic only transfers the non transferred plans revenue and time commitments ---with associated S&T liabilities ---must transfer is now AT&T's new fraud. AT&T understood the ambiguity of the tariff allow this fraud to succeed no matter how absurd it is and contrary to AT&T's practice in the marketplace.

78) Under AT&T's comical new interpretation Company A with $100 million per year commitment and 50,000 end-users transfers 1 of its end-users with a $200 phone bill to Company B with only a $10,000 per year commitment and Company B has to assume the $100 million revenue commitments of Company A! Of course Company B doesn't have to assume the $100 million plan commitment of Company A. AT&T was simply betting that Judges would look at only the two words "all obligations" and not read the rest of the sentence and not equate the words to the reality of the marketplace.

79) AT&T counsel Mr Brown continually stressed to the FCC that 2.1.8 states "ALL OBLIGATIONS!" All means ALL and that includes S&T obligations need to be transferred on traffic only transfers. Mr. Brown even was so smug and confident in his fraud that he was gracious enough to provide the FCC with Webster's Dictionary definition of the word: "ALL." AT&T's post 2005 fraud was to keep the Courts and FCC's attention on only on 2 words "ALL OBLIGATIONS" of the full sentence in 2.1.8. It was not until after the case went to the FCC for the second time did the petitioners finally nail the language of 2.1.8 regarding why S&T obligations did not transfer on traffic only transfers under 2.1.8! Petitioners had always simply used the form and indicated whether it was a plan transfer or traffic only transfer and simply provided AT&T with the form. A review the language of Section 2.1.8 will further expose AT&T's latest intentional fraud and show why the Courts missed it:

80) Petitioners have already detailed where in the language of 2.1.8 it allowed the "traffic only" transfers and now will detail where in 2.1.8 it allocates which obligations transfer: Here is 2.1.8 again for your convenience is 2.1.8. Exhibit B pg. 6 n.46 Section 2.1.8 in Jan 1995 Stated:

> Transfer or Assignment – WATS, including any associated telephone number(s), may be transferred or assigned to a new Customer, provided that:
>
> A.The Customer of record (former Customer) requests in writing that the Company transfer or assign WATS to the "new Customer".
> B. The "new Customer" notifies the Company in writing that it agrees to assume all obligations of the **former** Customer at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for the service and (2) the unexpired portion of any applicable minimum payment period(s).
>
> C.The Company acknowledges the transfer or assignment in writing. The acknowledgement will be made within 15 days of receipt of notification.
>
> The transfer or assignment does not relieve or discharge the former Customer from remaining jointly and severally liable with the new Customer for any obligations existing at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for WATS, and (2) the unexpired portion of any applicable minimum payment period(s). When a transfer or assignment occurs, a Record Change Only Charge applies.

81) Notice line B: "all obligations of the **"former" customer"**—it's not all obligations of the transferor customer! It's all obligations, BUT all obligations is only on what service has been selected for transfer, which obviously makes the transferor customer a **FORMER** Customer for that transferred service! The traffic transferring AT&T customer is a **REMAINING** AT&T Customer is not a **FORMER** AT&T CUSTOMER as the remaining AT&T customer is obviously keeping its AT&T plan with commitments. If you read the whole sentence the REMAINING AT&T customer with its plan obligations obviously can't simultaneously be a **FORMER** AT&T customer. For traffic only transfers the entire plan and its revenue and time commitments and associated shortfall and termination obligations are NOT selected for transfer to make that transferor customer a former AT&T customer! Therefore the plans revenue and time commitments and associated shortfall and termination obligations don't transfer! It's as simple as that! It's simple when its explained but AT&T's post 2005 scam was that Judge Bassler and the FCC should only focus on the words "all obligations." The key word in that full sentence is "FORMER" not "all obligations" Petitioners analysis of the 2.1.8 version was aided by future clarification changes to section 2.1.8.

82) Unfortunately petitioners did not decode 2.1.8 until after the NJ District Court had already sent the case back to NJ. The US Court of Appeals and Federal District Court Judge Politan & Judge Bassler never had the tariff decoded for them as AT&T certainly wasn't going to do it for them. When petitioners filed with the FCC the detailed explanation of its all obligations of the **former** customer analysis it was no coincidence that AT&T counsel Mr Brown called the very next day asking petitioners how much petitioners wanted to settle. AT&T obviously understood its latest ALL OBLIGATIONS fraud was decoded under 2.1.8. AT&T counsel Brown threatened that if petitioners didn't take AT&T low ball settlement offer that AT&T would tie the case up forever. AT&T counsel post 2005 expects everyone to believe that revenue and time commitments and their associated shortfall and termination obligations transfer on "traffic only" transfers—despite the fact that still today AT&T doesn't practice its post 2005 fraud in the marketplace. Mr. Brown basically told the NJ District Court Judge Bassler just believe my new fraud and never mind that my fraud is not being practiced in the marketplace! Mr. Brown expects everyone to believe his nonsensical fraud is correct and every AT&T sales and customer service executive in the USA are all doing it wrong!

83) Interesting what gave rise to AT&T's post 2005 "all obligations" fraud. AT&T Counsel David Carpenter was questioned by Judge John Roberts during oral argument and the following shows how Justice John Roberts attention focused on "all obligations" which led to the DC Courts confusion as to which obligations transfer--- and no doubt gave AT&T the idea for its post 2005 "all obligations" fraud on Judge Bassler and the FCC.

> JUDGE ROBERTS: Why not? The tariff says they have to **assume all the obligations**. (Oral: Pg 12, Line 9) MR. CARPENTER: "**Yes, but what it means to assume all the obligations.** What obligations apply **may vary depending on what's** transferred. "In some cases the **only obligation** that may be transferred is **going to be the outstanding indebtedness.**"

84) Mr. Carpenter's confirms that **all of the obligations** assumed **depends upon what is transferred.** Carpenter's fraud before this Court was to explain how the tariff actually was interpreted to vacate the FCC decision ----but remember he had his post 2005 minted fraud going that petitioners wanted to transfer ZERO OBLIGATIONS!! Yes the new customer must assume all of the obligations of the ***former*** customer, as Carpenter explains **what is selected for transfer.** All obligations of the former customer! You are only a former customer on that which you transfer!!!! So all obligations pertains to only the obligations on what is being transferred.

AT&T Counsel David Carpenter during Third Circuit Oral Argument:

> We point out in our brief that there's a **distinction** between transfers of entire plans, and transfers of individual end-users locations. That when the "**plan"** is transferred, **"all the obligations"** have to go along with it. (exhibit V. Pg 15 line 9)

85) The above correct explanation of the tariff by David Carpenter was at a time when AT&T was running its bogus "Fraudulent Use" scam and mischaracterizing petitioner's transaction as a plan transfer and not a "traffic only" transfer. Mr. Carpenter DC Circuit statement is that there is a distinction as to what gets transferred depending upon whether it is "traffic only" transfer vs. a plan transfer. AT&T's (post US COURT OF APPEALS Decision) is that there is no distinction. AT&T's current "all obligations" fraud is that it does not matter if it is a "traffic only" transfer or a plan transfer, the non transferred plans obligations/liabilities must transfer. Carpenter above is alluding to the fact that only on a plan transfer do the plan commitments transfer.

See Carpenter again at exhibit V. Pg 15 line 23…

> When you're transferring **all** the traffic, you're transferring the **plan**. That is –and the obligations have to go with it, shortfall and termination liability. (emphasis added)

86) AT&T Counsel Carpenter is correct in his tariff analysis agreeing with AT&T pre 2005 counsels Brown, Meade, Friedman, Barillari, Whitmer and Fash, but petitioners did not transfer all the traffic, therefore the plan and its associated S&T obligations do not transfer. Mr. Carpenter then explained what all obligations meant and correctly declared it varied, depending upon what's transferred in these two statements to the US COURT OF APPEALS DC Circuit:

> Mr. Carpenter: Yes, but what it means to assume **all the obligations.** What obligations **apply** may vary depending on what's transferred. (11/12/04 US COURT OF APPEALS pg.12 Line 22 Exhibit W)

> Mr. Carpenter: Now what obligations they are going to end up assuming will vary depending on what service is being transferred. (11/12/04 US COURT OF APPEALS pg.12 Line 12 Exhibit W.)

87) Counsel Carpenter clearly concedes that plan obligations do not transfer on non plan –"traffic only" transfers. AT&T counsel Richard Brown before Judge Bassler and now the FCC of course doesn't have a rational explanation for his fellow counsels' explanation of obligation allocation under 2.1.8. Nor does Mr. Brown wish to comment on why all AT&T executives throughout the USA claim that AT&T has never practiced Mr Brown's post 2005 obligation allocation. Mr Brown's running to petitioners seeking to settle the day after petitioner's 2.1.8 tariff analysis of "all obligations of the **former** customer" speaks volumes.

AT&T Intentionally Violates its Tariff to Put Petitioners Out Of Business Despite Asserting that Payment Dispute Issues Are Pending Litigation

88) AT&T's unlawful denial of petitioners "traffic only" transfer was in Jan 1995. Petitioners plans were as noted by NJ District Court Judge Politan and the FCC in 2003 were ordered prior to June 17th 1994. Judge Politan advised AT&T that its ability to collect future obligations was "illusory" and thus denied every penny of AT&T's requested $15 million dollar deposit. Despite Judge Politan and the tariff AT&T in June of 1996 AT&T placed $80 million in shortfall and termination true-up charges on petitioner end-users. AT&T conceded in its 1997 settlement agreement with co-petitioner Combined Companies Inc.

(CCI) that the infliction of the charges was involved in pending litigation. In that AT&T/CCI agreement it was conceded that these were **alleged** changes. Despite Judge Politan's decision and AT&T concessions that the issue is still pending, AT&T unlawfully inflicted the $80 million in charges----and again used illegal tariff remedy to maximize damages against petitioners to put petitioners out of business.

AT&T Disregards Judge Politan and Violates Tariff
Pre June17th 1994 Grandfathered Plans

The FCC 2003 decision correctly noted that the plans were ordered pre June 17th 1994. The plans original commitments would have been completely extinguished by the end of its 3 year commitments which ran into 1997; however AT&T inflicted the charges in June 1996.

89) Its not only the fact that AT&T unlawfully inflicted the $80 million in charges—AT&T used an illegal remedy and prepared for the fraud to maximize the damages. Under the tariff ***if*** the $80 million in charges was actually warranted AT&T was obligated to charge only its aggregator—but to maximize damages AT&T applied the $80 million in charges to all the aggregators' end-users.

90) Samples have been provided the FCC and AT&T that show businesses who expected a $60 phone bill received a $4,428 phone bill! Obviously petitioners business was destroyed when AT&T did this as end-user customers went ballistic! There was a billing dispute leading up to the placing of these charges. Petitioners simply advised AT&T that the charges should not be placed at all and AT&T but AT&T claimed that they were permissible in being applied.

AT&T concedes there was a dispute as AT&T stated:

(You should know, however, that CCI disputes these charges.)

Petitioners end-users went ballistic and AT&T blamed the aggregator and then AT&T removed the charges and the end-users went back to AT&T but without the aggregator extra discounts—a well-planned scheme.

91) AT&T intentionally violated the clear cut tariff law in order to put petitioners out of business. AT&T's remedy **if** shortfall is actually appropriate under the tariff:

- The Customer will assume all financial responsibility for all designated accounts in the plan and will be liable for all charges incurred by each location under the plan.

Above the AT&T's **Customer** is the "the aggregator" and the aggregator Customer of AT&T is the only one that is financially responsible for the charges, not the aggregators end-users –who are not AT&T's customers.

The tariff further details:

> Shortfall and/or termination liability are the responsibility of the Customer. Any penalty for shortfall and/or termination liability will be apportioned according to usage and billed to the individual locations designated by the Customer for inclusion under the plan. For billing purposes, such penalties shall reduce any discounts apportioned to the individual locations under the plan.

92) If warranted shortfall and termination charges are the responsibility of the AT&T customer the aggregator petitioners---not the petitioners end-users. The ONLY remedy that AT&T's tariff avails AT&T is to simply remove the discount on the end-users bill if the aggregator does not initially pay AT&T. So in other words an end-user bill received an aggregator 20% credit of $13.21 on end-users $66.02 gross usage. The $13.21 credit is the 20% discount provided by being under the aggregators CSTPII/RVPP plan. The AT&T remedy is ONLY that the **$13.21 be removed**. That's it!

93) The tariff does not permit AT&T to apply shortfall and termination true-up charges in EXCESS of the $13.21 credit provided by AT&T's customer the petitioners. ***If*** the charges were appropriate AT&T as the above excerpt from the tariff indicates:

> "For billing purposes, such penalties **shall reduce any discounts** apportioned to the individual locations under the plan."

AT&T's remedy ---if warranted ---was to simply remove the $13.21 cents---not intentionally infuriate the end-users by sending that end-user that averages $66.02 a bill for $4,428! Remember this is pre internet development and thus the toll free service line was the end-users customer service and sales line and if the business lost that number for non-payment to AT&T the business would suffer severe damages. So businesses quickly dropped the aggregator as AT&T promised it would remove the shortfall and termination charges.

94) Obviously AT&T is aware that it was an intentional violation of the tariff. AT&T used an ***illegal remedy*** in order to put petitioners out of business. It was a planned attack to inflict massive charges to infuriate petitioner's end-users, and then rescue the end-users back to AT&T with higher rates. AT&T of course does not comment at the FCC on its illegal billing remedy—after all what is AT&T possibly going to say—the law is clear as could be.

95) The FCC in 2003 Decision decided that AT&T used an illegal remedy in applying its "fraudulent use" argument as AT&T "permanently denied" the transaction instead of the tariffed remedy of "temporarily suspending" service. The FCC 2003 Decision decided that when an illegal remedy is used that provision can no longer be relied upon. The Court of Appeals for DC Circuit did not find fault with the FCC position on treating illegal remedies. Likewise when AT&T used an illegal remedy in applying the $80 million in charges the FCC is also obligated to decide that AT&T can no longer be able to rely upon these its shortfall and termination charges.

Summary of Intentional Frauds
& Clear Tariff Violations

96) Despite being qualified to obtain a deeper discounted plan petitioners were denied and thus followed the tariff explicitly as it has always done for other "traffic only" transfers. If you are somewhat confused here is a recap of just a few of the frauds AT&T engaged in order to prevent the "traffic only" transfer and inflict the charges to put petitioners out of business.

1) AT&T discriminated against petitioners by denying access to a deeper discounted plan despite qualifying for it.
2) Tried to retroactively change the 2.1.8 tariff (TR8179)—the cover-up always solves the crime.
3) Violated section 2.1.8's statute of limitation period of 15 days.
4) Enacted TR8179 in the marketplace despite it being denied as Coleen Boothby cited.
5) Asserted 2.1.8 NO LONGER allowed "traffic only" transfers (Joyce Suek & Charles Fash)
6) Asserted Fraudulent Use for suspecting the plans would have shortfall when Judge Politan advised AT&T its suspected shortfall charges were illusory as the plans were Pre June 17th 1994 ordered and not a penny of AT&T's requested $15 million deposit will be required from petitioners.
7) Even if Fraudulent Use was suspected the FCC decided AT&T violated its tariff by using illegal remedy by "permanently denying" the transaction instead of the tariff remedy of only "temporarily suspending" service.
8) New scam after 10 years into case that "Traffic Only" meant "Traffic Only"-No Obligations.
9) AT&T's "Nostradamus Crystal Ball Defense" minted 10 years into case that AT&T didn't process the transaction in **1995** due to comments in **2005**!
10) Shortfall and termination obligations moved 4 times from being encompassed "within minimum payment period" to not being included—and these arguments were consistently maintained!
11) AT&T 10 years into the case changed its interpretation for "traffic only" transfers from the non transferred plans revenue and time commitment and associated shortfall and termination obligations **do not** transfer to these commitments **do** transfer. This is the current fraud despite AT&T being shown evidence of AT&T executives who claim that current and past business practices do not mandate the assumption of non-transferred plans commitments.
12) In June of 1996 placed shortfall and termination charges on 3 year commitment plans that were June 17th 1994 grandfathered through 1997 when all commitments would be extinct.
13) Used an illegal remedy by assessing the unwarranted shortfall and termination charges on all of the aggregators end-users bills in excess of their aggregator provided discount.

97) These are only a baker's dozen of tariff violations and intentional frauds AT&T counsels engaged in. Petitioners could document hundreds of additional false statements but if you don't understand by now that this was an AT&T fraud from day one, I have a Bridge in Brooklyn I want to sell you.

98) AT&T counsel Richard Meade stated in a February 16, 1995 letter to the FCC's David Nall when the FCC denied AT&T's TR8179 Substantive Cause Pleading:

> AT&T is filing at this particular time to prevent a transaction that (at the minimum) elevates form over substance

99) AT&T counsel Richard Meade rejected FCC TR8179 argument basically was petitioners **followed the proper tariff methodology** i.e. "FORM" (the correct tariff procedure) ----but AT&T wanted it considered a plan transfer due to the percentage of accounts being transferred i.e. SUBSTANCE.

100) AT&T counsel Meade conceded 2.1.8 was followed. If AT&T back in January 1995 came to petitioners and said ---What you are doing is totally in compliance with the tariff but we would rather you have your own discount plan and accept less discounts than the 66% offered on CT 516 ---then that option may have been accepted by petitioners.

101) Instead AT&T flat out refused to offer any discount plan close to what was being offered other AT&T Customers-----but chose instead to engage in intentional fraud on the Courts and FCC for over 20 years and counting. AT&T approached petitioners the day after petitioner's tariff analysis filing at the FCC. AT&T basically threatened that if petitioners didn't accept AT&T's paltry hush money offer, AT&T will make that the case gets dragged out for many more years—that's AT&T's game plan now.

102) AT&T has already settled with petitioner's former co-petitioner Combined Companies Inc (CCI) for the exact same "traffic only" transaction. In exchange CCI had to drop its claims against AT&T and CCI's owner Mr Larry Shipp consulting services were mandated under the settlement to assist AT&T's defense against the 4 remaining petitioner companies.

AT&T counsel Mr Brown brags who on his website as of 6/10/14:
http://www.daypitney.com/people/people-detail.aspx?proID=259

> "represented AT&T Corp. in over **25 actions** against telecommunications resellers involving claims under the Federal Communications Act, Lanham Act, Sherman Act, and state law."

103) Mr Brown's website claims that he was involved with 25 actions. Those 25 actions were targeted against the largest aggregators. AT&T simply did not want to adhere to its obligations to have its discount plans available for resale. AT&T simply violated its tariff and concocted fraudulent assertions in order to put all the aggregators/resellers out of business. The evidence is overwhelming.

104) AT&T counsel Mr David Carpenter advised petitioners at the DC Circuit oral arguments that the head of the AT&T's defense is in house counsel Edward R. Barillari. Mr. Barillari has coordinated and acted in concert with all AT&T counsels to perpetuate AT&T's fraud from day one. AT&T counsels (Whitmer, Carpenter, Friedman, Meade, etc.) all of whom had asserted plan commitments do **not** transfer on traffic only transfers all "miraculously disappear" from the case post 2005 when AT&T needed to assert its new fraud that plan commitments **do** transfer on "traffic only" transfers. AT&T did not change law firms it played "rotating counsels!" Despite AT&T's counsels knowing the case file very well AT&T obviously didn't want its counsels that conceded the obligation allocation under 2.18., prior to 2005 to face a Judge and FCC with its new post 2005 "all obligations fraud," so those AT&T counsels were placed in AT&T's "witness protection program".

105) All AT&T Counsels that acted in concert to intentionally engage in fraud must have their licenses revoked. AT&T corporate HQ is also well aware of this case. Former co-petitioner Combined Companies Inc. (CCI) president Larry Shipp, of his own volition, overnighted a letter February 13, 2006 to AT&T's CEO Edward E. Whitacre and claimed that CCI was fraudulently induced into settling as the charges were not supposed to have been placed on the plans and detailed petitioners FCC proceeding. AT&T's CEO in 2003 David Dorman and all AT&T's Board of Directors were made aware of the 2003 FCC Decision.

106) AT&T counsels did not want its senior AT&T executives aware of the intentional frauds on the Court and FCC that AT&T counsels were engaged. It would demonstrate AT&T's senior executive's willingness to look the other way and allow counsels to continue the intentional frauds instead of stopping the fraud on the Courts and FCC.

107) AT&T counsels were so fearful of exposing AT&T's senior executives of the frauds on the Courts and FCC without putting a stop to it that AT&T went to the NJ Federal District Court and complained that petitioner did not have the right to contact AT&T employees at all. The bottom-line is AT&T's senior executives know all about the intentional fraud its counsels are engaged in.

The FCC's and NJ District Courts Burying
of AT&T Intentional Fraud
20 Years and Counting…

108) The real travesty here is the FCC is obviously aware that AT&T counsels have engaged in intentional fraud but have **buried AT&T's fraud.** So the question is why is it that the FCC is allowing AT&T counsels to get away with intentional fraud and intentional violation of its tariffs?

109) The FCC's Pam Arluk advised petitioners that her senior management ordered all FCC counsel off the case! Obviously the statement appears to have been accurate as certainly after 15 years at the FCC analyzing the same tariff sections--- with this clear cut of a fraud ----anyone would realize that the FCC could have had its least experienced counsel to interpret the tariff.

110) Petitioners aren't the only party that has an interest in all of the case issues being resolved. The IRS and multiple States Departments of Revenue want the FCC to clarify whether the shortfall and termination charges AT&T inflicted were permissible. AT&T has conceded being "compensated for its charges in a form other than cash" –i.e. possible taxable barter exchange. The issue not only affects the $80 million in petitioner's case but AT&T may have buried **BILLIONS** of shortfall and termination charges with other aggregators/resellers. AT&T claimed that it didn't pay the taxes in 1996 and doesn't owe the taxes now due to statute of limitations. However AT&T conceded in 1997 within its settlement agreement with CCI that the issues regarding these shortfall and termination changes were still involved in **pending** litigation. So it doesn't appear AT&T can claim a statute of limitations defense when it concedes there is still pending litigation regarding these charges—which would seemingly toll a statute of limitations—if there really was one.

111) Furthermore there are other aggregators that have an interest in these issues being resolved. AT&T conceded in 1997 that the permissibility of inflicting shortfall and termination liabilities was still pending litigation! 800 Services, Inc for example in 1995 was also put out of business by AT&T based upon AT&T's interpretation of the June 17th 1994 issue. AT&T put many aggregators out of business based upon its' interpretation of the June 17th 1994 provision. AT&T incredibly claimed that aggregators should only have only 1 year of its 3 year commitment grandfathered—totally absurd! Grandfathering should occur for the whole three year commitment as per the tariff! NJ District Court Judge Politan had already advised AT&T in 1995 that AT&T can't get a penny of its $15 million deposit request based upon the likelihood that the June 17th 1994 provision would be decided against AT&T at the FCC. Despite AT&T still conceding in 1997 that the permissibility of these charges were still involved in pending litigation AT&T went ahead anyway and put aggregators out of business in June 1996. Given

the fact that the June 17th 1994 provision is still pending there are no doubt many aggregators that have an interest in the FCC resolving all issues.

112) The FCC's current "position" is the case is "**pending**;" however this of course does not mean anyone is actually actively working the case. A Freedom of Information Act (FOIA) request was made of all FCC Commissioners email accounts and it discovered that 6 different statements were attributed to the FCC Commissioners regarding the status of the case. The FCC **"exempted itself"** from disclosing the 6 statements made by its Commissioners regarding the case status. Just the fact that the FCC Commissioners are well aware of the case and were having conversations about its delayed status does not appear to be normal. The case still has not gotten out of the branch that decides the case before the Commissioners are supposed to actually see the case. There does not appear to be a logical reason why the FCC has buried the AT&T intentional fraud for this long.
113) Possibly the FCC is intentionally burying the AT&T frauds because it doesn't want to deal with maybe hundreds of aggregators and reseller cases that were unlawfully put out of business? No one can understand why the FCC needs 15 years of the 20 years that the case has been in existence to interpret a case that has overwhelming evidence against AT&T. God only knows why the FCC is burying the AT&T intentional frauds!

114) Likewise the NJ District Court's seeking an FCC decision on what obligations transfer under 2.1.8 for a "traffic only" transfer is simply unfair to petitioners. Petitioners engaged in a "traffic only" transfer using the standard AT&T form and asked for a "traffic only" transfer **as per the tariff**. The Court of Appeals for DC Circuit has correctly determined that 2.1.8 allows "traffic only" transfers. Whatever the obligations allocation was under the tariff should have simply been processed by AT&T within section 2.1.8's statute of limitation of 15 days.

115) The evidence is conclusive that plan commitments don't transfer under a non plan transfer—but let's play what if ----What if the FCC decided in 2014 that these obligations should transfer? Petitioners did not say to AT&T in 1995 that it only wants the "traffic only" transfer under 2.1.8 and it will **only** proceed with the transaction if obligation allocation is done in a certain way! No! Petitioners simply asked for a "traffic only" transfer and ***whatever*** the obligations allocations is determined is actually totally **irrelevant** to the case at hand. If the FCC were to state that plan commitments should transfer that simply means that the plan would have transferred and PSE would still have been able to place the accounts at 66%.

116) AT&T can't possibly take the position in 2014 that any obligations allocations scenario determined by the FCC in the future is justification why in 1995 the "traffic only" transfer wasn't done! Petitioners would win the case no matter what the obligations allocation was as AT&T was simply supposed to process the "traffic only" transfer within 15 days as petitioners properly used section 2.1.8. So why is the NJ District Court making petitioners wait on the FCC's determination on which obligations transfer? It can't be a primary jurisdiction issue at this point as petitioners win no matter what the FCC states regarding allocation of obligations now that it has been conceded that 2.1.8 allows "traffic only" transfers.
As Judge Politan's District Court decision stated:

> "Plaintiffs cannot be held to construe the section governing transfers under the tariff as meaning that which it does not. Words mean what they say. Rules should not be changed in the middle of the game; and certainly not without notice."

AT&T counsels have simply engaged in intentional fraud and tariff violations and senior AT&T executives are well aware of the intentional fraud. AT&T's intentional fraud was expected 20 years ago. The FCC allowing AT&T to intentionally engage in fraud was not expected.

Amazing 20 years of intentional fraud on the US Courts and FCC. All of AT&T counsels need to lose their licenses.

Given the fact that all AT&T executives are claiming AT&T's post 2005 "all obligations" theory is a fraud if AT&T does not address this NJ District Court will be advised that AT&T is conceding the "traffic only" transfer allocation of obligations issue.

Petitioners are posting this filing to the FCC public comments and will give AT&T's counsels the sufficient opportunity till Monday June 16th to refute any of the above comments.

Petitioners will advise the entities that deal with ethics complaints and intentional frauds on US Judicial system that AT&T's counsel was given the opportunity to reply. Petitioners will file both parties' comments with multiple State Bars, the US Court of Appeals DC Circuit, FCC Inspector and NJ Federal District Court.

Respectfully Submitted,
Group Discounts, Inc.
/s/ Al Inga
Al Inga President